

MEMO# 925

January 12, 1989

INSTITUTE COMMENT LETTER ON PROPOSED RULE PERMITTING DEFERRED SALES LOADS

- 1 - January 12, 1989 TO: BOARD OF GOVERNORS NO. 4-89 DIRECT MARKETING COMMITTEE NO. 2-89 MARKETING COMMITTEE NO. 2-89 OPERATIONS COMMITTEE NO. 2-89 SALES FORCE MARKETING COMMITTEE NO. 2-89 ACCOUNTING/TREASURERS COMMITTEE NO. 6-89 SEC RULES MEMBERS NO. 2-89 RE: INSTITUTE COMMENT LETTER ON PROPOSED RULE PERMITTING DEFERRED SALES LOADS

Attached is the comment letter filed by the Institute with respect to SEC proposed rule 6c-10, which would permit mutual funds to impose both contingent and non-contingent deferred sales loads pursuant to the conditions in the rule. (See Institute Memorandum to Board of Governors No. 70-88, SEC Rules Members No. 54-88, Operations Committee No. 27-88, Accounting/Treasurers Advisory Committee No. 39-88, Marketing Committee No. 30-88, Sales Force Marketing Committee No. 41-88, Direct Marketing Committee No. 38-88, dated November 3, 1988.) The Institute comment letter generally supports the portion of the proposed rule that would codify exemptive relief for contingent deferred sales loads (CDSLs). However, the specific terms and conditions governing the imposition of CDSLs should fall within the self-regulatory processes of the National Association of Securities Dealers, Inc. ("NASD"). With respect to the portion of the proposal permitting the use of non-contingent deferred loads, the Institute letter opposes the proposal as uneconomic and unworkable. The letter objects to this portion of the proposed rule on the grounds that the Staff has no experience in the area of non-contingent deferred loads and that there is little interest in the industry for such a rule. The proposal, particularly as it relates to installment deferred loads, is unworkable and infeasible because it creates a number of operational problems such as the prohibition against charging interest, payment and tax problems, burdensome transfer agent and computer capacity and redesign problems, distributor recordkeeping and accounting burdens and - 2 - specific unworkable conditions of the proposed rule. The letter - 3 - states that further operational difficulties would undoubtedly arise for any fund which actually attempted to implement a deferred installment load arrangement. As with respect to CDSLs, the Institute suggests that the specific terms of the non-contingent deferred load should be delegated to the NASD if the Commission wishes to adopt such a rule notwithstanding the problems noted in the comment letter. Finally, the letter points out that deferred loads are no substitute for spread-load 12b-1 plans. Although the Commission's proposing release states that the deferred load proposal was intended to provide an alternative to the use of 12b-1 plans, the proposal creates a number of practical and operational problems and fails to adequately replace those benefits provided by 12b-1 plans. We will keep you informed of developments. Catherine L. Heron Deputy General

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